



State-Tribal Relations Committee

60th Montana Legislature

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August 12, 2008

Memo

To: State-Tribal Relations Committee Members

From: Pat Murdo, Legislative Staff for State-Tribal Relations

Re: Issue raised at June 23 meeting on liquor licenses held by tribes

The Confederated Salish and Kootenai Tribes (CS&KT) asked that the State-Tribal Relations Committee agenda for June 23 include a discussion about liquor licenses that tribes can hold. CS&KT Tribal attorney Ranald McDonald suggested that some cities and towns are allowed to hold multiple liquor licenses. He suggested adding tribes to the list of entities that can hold more than one liquor license. The one-license for one-entity regulation under which the tribes now operate affects CS&KT most particularly in its operations of the KwaTaqNuk Resort and the Gray Wolf Casino. The tribe holds the liquor license at the KwaTaqNuk Resort but cannot own the license at the Gray Wolf Casino because state law limits all-beverage liquor licenses to one all-beverage liquor license per applicant and the tribe is considered to be one applicant.

Relevant state statutes regarding only the all-beverages liquor licenses (and not beer or wine licenses¹) are:

- 16-4-201 (all-beverages license quota), with carve-out for veterans and military "reservations"
- 16-4-202 (resort retail all-beverage licenses, based on accommodation units in resort and excluding resorts in quota areas that are wholly within an incorporated city limit. Also limits gambling machines to 20 permits.)
- 16-4-205 (license issued to one person only)
- 16-4-208 (airport all-beverages license -- allowed without regard to quotas and may be leased)
- 16-4-209 (all-beverages license for tribal alcoholic beverages licensee or military clubs, not subject to quota limits of 16-4-201 but must meet other statutes governing all-beverage licenses)*
- 16-4-304 (beer and wine license for Yellowstone Airport, owned by state)
- 16-4-305 (alcoholic beverage licenses in Montana Heritage areas, state-related commission owner)
- 16-4-401 (license as privilege and criteria that separate different types of licensees -- individuals, publicly traded corporations, privately held corporations, general partnerships, limited or limited liability partnerships, limited liability companies)

*CS&KT's KwaTaqNuk license was issued as a resort license under 16-4-202, MCA, in 1992. No Montana tribe has a license issued under the exemption for 16-4-209, MCA, according to Shauna Helfert at the Department of Revenue. The license must have been originally issued before January 1, 1985.

(more)

State-Tribal Agreements regarding Alcohol Taxes

The State has Alcohol Tax Agreements in effect with the Blackfeet, the Fort Peck and the Fort Belknap Tribes. These are revenue sharing agreements related to taxes. One statement in the agreements is that one purpose is to avoid litigation.

Reservations on which No Alcohol is Allowed

The Crow Tribe and the Northern Cheyenne Tribe have a ban on the sale of alcohol on the reservation. Some other tribes limit the availability of alcohol by place.

Seminal Court Case Impacting State and Tribal Alcohol Regulations

The US Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), held that a state has a vested interest in controlling alcohol sales on an Indian reservation and that a state may regulate liquor transactions on Indian reservations concurrently with a tribe. The court held that 18 U.S.C. 1161 (application of Indian liquor laws) provides for, rather than preempts, concurrent regulation by both tribal ordinance and state law over liquor transactions on Indian reservations.

Possible Changes Related To CSKT Request

One possible approach for any tribe that wanted the tribe itself to own more than one license would be to amend the wording of 16-4-209, MCA; exempt tribal governments from 16-4-205, MCA, amending subsection (2); and amend 16-4-401(2). A revision for 16-4-209 possibly could use some of the same language as for officers' clubs under 16-4-201 and for the Montana Heritage all-beverage licenses under 16-4-305. That is: More than one license (or up to a certain number of licenses) may be issued to a federally recognized tribe for use within the exterior boundaries of a reservation but the license is nontransferable and nonassignable as to ownership. The licenses are to be considered when determining the appropriate quotas for issuance of other retail liquor licenses, as provided under 16-4-201, MCA. Another option might be to cap the relationship between multiple all-beverage licenses issued to a tribe and the number of gaming machines on the reservation (perhaps as part of a gaming compact).

Public Policy Issues:

- Federal law under 18 U.S.C. 1154 and 1156 makes it illegal to provide alcohol in "Indian country" but exempts through the definition of Indian country any fee-patented lands in non-Indian communities or rights-of-way through Indian reservations. Providing alcohol in Indian country is allowed under 18 U.S.C. 1161 if allowed by tribal ordinance and state law. It appears that, if no limit is put on the number of licenses issued to tribes, a tribe could prevent any other all-beverage license in an area within the exterior boundaries of a reservation in which there otherwise are quotas for nontribal all-beverage licensees.
- Some reservations are "dry", which means that not all reservations would be affected by any changes.

1. Under 16-4-110, MCA, tribes that had licenses issued before Jan. 1, 1985, can receive beer licenses for consumption on premises of businesses operated by a tribal alcoholic beverages licensee within the exterior boundaries of a Montana Indian reservation.